

PUBLIC MEETING MINUTES

August 12, 2010

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Dowdin Calvillo called the meeting to order at 10:05 a.m.

Members Present

Alice Dowdin Calvillo, Chair
Sally M. McKeag, Member
Robin W. Wesley, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Bernard McMonigle, Chief Administrative Law Judge (Excused)
Christine Bologna, Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

After establishing that a quorum had been reached, Chair Dowdin Calvillo called the Public Employment Relations Board (PERB or Board) to order for a return to the open session of the June 10, 2010 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Chair Dowdin Calvillo read into the record the decisions that issued since the open session in June. Those were PERB Decision Nos. 2115-S, 2116-H, 2117-H, 2118-S, 2119-M, 2120-M, 2121-M, 2122-M, 2123-S, 2124, 2125-M and Administrative Appeal Order No Ad-384. In request for injunctive relief (I.R.) No. 584 (*SEIU United Healthcare Workers West v. Fresno County In-Home Supportive Services Public Authority*), the request was denied; I.R. No. 585 (*Stationery Engineers Local 39, International Union of Operating Engineers, AFL-CIO v. City of Sacramento*), the request was denied; and IR No. 586 (*California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Department of Personnel Administration)*), the request was denied. A document containing a listing of the aforementioned decisions was made available at the meeting.

Without objection, Chair Dowdin Calvillo adjourned the June 10, 2010 public meeting. She then opened and called to order the August 12, 2010 public meeting. Without objection, Chair Dowdin Calvillo substituted the previous roll call for the purposes of declaring a quorum. Hearing no objection, the order was made. Member Wesley led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member McKeag and seconded by Member Wesley that the Board adopt the minutes for the June 10, 2010 public meeting.

Ayes: McKeag, Wesley, and Dowdin Calvillo.

Motion Adopted – 3 to 0.

Comments From Public Participants

None.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

a. Administrative Report

Chief Administrative Officer Eileen Potter reported that Paula Crouch received an award this past fiscal year for closing PERB's accounting books on time without errors. This will mark her ninth award in a row for her exemplary work in closing the books on time without errors. Ms. Potter also announced that Ms. Crouch will be permanently retiring this year at the end of December. The Board acknowledged her diligent work and expressed that she will be missed.

Member McKeag inquired as to the status of the security improvements being made to the PERB Headquarter's Office. Ms. Potter stated that she anticipated completion of the project by this Friday.

b. Legal Report

General Counsel Tami Bogert reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports, Ms. Bogert recapped, in particular since the Board's last public meeting in June, the following information. In regards to monthly activities, Ms. Bogert reported that during the months of June and July, 190 new cases were filed with the General Counsel's office; 183 case investigations were completed; and a total of 36 informal settlement conferences were conducted by staff. For comparison purposes, these calendar-year numbers are very close to those reported last year at this time. Similarly, the fiscal-

year-end numbers continue to reflect PERB's consistently high workload; for example, as of the close of FY 2009-2010, approximately 802 new unfair practice charges were filed with PERB. Ms. Bogert noted that PERB's final numbers will be reported, as will comprehensive year-end data, in the 2009-2010 Annual Report to the Legislature in October 2010.

Ms. Bogert further reported that, since the Board's June meeting, as Chair Dowdin Calvillo noted earlier, three requests for injunctive relief were filed; all three were denied by the Board. In terms of year-end data for FY 2009-2010, PERB closed the books with approximately 13 Injunctive Relief Requests.

In terms of litigation, Ms. Bogert first reported on the following 10 new cases:

1. *PERB v. California Nurses Association (CNA)* – This is the injunctive relief case initiated by PERB after the Board granted I.R. Request No. 583 in which PERB sought from and was granted by the San Francisco County Superior Court a temporary restraining order and subsequently a preliminary injunction to prohibit CNA-represented nurses in UC's Registered Nurse bargaining unit from striking during their working hours at UC medical centers and facilities.
2. *California Correctional Peace Officers Association (CCPOA) v. PERB* – This case, brought in Alameda County Superior Court, challenges PERB Decision No. 2106-S.
3. *Coalition of University Employees (CUE) v. PERB* – This case, brought in Sacramento County Superior Court, partially involves Unfair Practice Charge No. SF-CE-905-H and a factfinding matter between CUE and the University of California.
4. *Santa Clara County Correctional Peace Officers Association v. PERB* – This case, brought in the Sixth District Court of Appeal, challenges PERB Decision No. 2114-M.
5. *County of Santa Clara v. PERB* – This case, brought in the Sixth District Court of Appeal, also challenges PERB Decision No. 2114-M.
6. *Siskiyou County Public Employees' Association v. PERB* – This case, brought in the Third District Court of Appeal, challenges PERB Decision No. 2113-M.
7. *Santa Clara County Registered Nurses Professional Association v. PERB* – This case, brought in the Sixth District Court of Appeal, challenges PERB Decision No. 2120-M.
8. *County of Santa Clara v. PERB* – This case, brought in the Sixth District Court of Appeal, also challenges PERB Decision No. 2120-M.
9. *Amalgamated Transit Union Local 1704 v. PERB* – This case, brought in the Fourth District Court of Appeal, challenges PERB Decision No. 2121-M.
10. *County of Riverside v. PERB* – This case, brought in the Fourth District Court of Appeal, challenges PERB Decision No. 2119-M.

Ms. Bogert then reported on the following litigation matter of interest to PERB. She stated that the California Supreme Court recently resolved the lead essential-employee-strike litigation case (*City of San Jose v. Operating Engineers Local Union No. 3*) pending before the Court. On July 1, the Court ruled that PERB has initial jurisdiction over a claim by a public entity that a strike by some or all of its employees is illegal unless a recognized exception to the exhaustion of administrative remedies requirement is established.

In Chief Administrative Law Judge Bernie McMonigle's absence, Administrative Law Judge (ALJ) Christine Bologna reported on the activities of the Division of Administrative Law and stated that the ALJ report had been distributed to the Board for its review. Ms. Bologna reported that in June and July, 22 new cases were assigned for hearing to PERB's six ALJs. She further reported there are 62 hearings assigned to the ALJs and 19 cases have been submitted for decisions to be written. In June and July, ALJs held 14 days of hearing and completed 3 formal hearings. There were 8 cases withdrawn and 9 proposed decisions were issued.

Ms. Bologna noted that in Fiscal Year (FY) 2009-2010, 121 new case assignments were made to the 6 ALJs. By comparison, in FY 2008-2009, 147 new cases were assigned to 7 ALJs; FY 2007-2008, 84 new cases were assigned to 7 ALJs; FY 2006-2007, 120 new cases were assigned to 6 ALJs; FY 2005-2006, 132 new cases were assigned to 5 ALJs .

In FY 2009-2010, 6 ALJs issued 57 proposed decisions with an average decision issuance time of 86 days from date of submission. By comparison, 7 ALJs issued the same number of proposed decisions in FY 2008-2009, averaging 93 days from date of submission. In FY 2007-2008, 7 ALJs issued 44 proposed decisions, averaging 94 days from date of submission. In FY 2006-2007, 6 ALJs issued 41 proposed decisions, averaging 85 days from date of submission. In FY 2005-2006, 5 ALJs issued 46 proposed decisions, averaging 63 days from date of submission.

In FY 2009-2010, 6 ALJs and 1 Regional Attorney held 150 days of formal hearing. By comparison, in FY 2008-2009, 7 ALJs held 163 hearing days; in FY 2007-2008, 7 ALJs held 166 hearing days; in FY 2006-2007, 5 ALJs held 119 hearing days; in FY 2005-2006, 5 ALJs held 116 hearing days.

At the end of FY 2009-2010, there were 64 hearings assigned to the 6 ALJs. By comparison, in FY 2008-2009, 61 hearings were assigned to 6 ALJs and at the end of FY 2007-2008, 39 hearings were assigned to 7 ALJs.

At the end of FY 2009-2010, 16 cases were submitted and await written proposed decisions. By comparison, at the end of FY 2008-2009, 25 cases awaited proposed decision issuance and the end of FY 2007-2008, 30 cases awaited proposed decision issuance.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported that the Legislative Report was circulated to the Board for its review. He reported that legislative approval was given to Assembly Bill (AB) 2767. This bill, as amended, addresses as one of several issues including the definition of “subordinate judicial officer.” AB 2767 has no substantive impact on PERB. Chair Dowdin Calvillo noted an update to the status of Assembly Bill 2537 (Silva). This bill would require certain agencies conducting adjudicative proceedings to provide by regulation for peremptory challenge if the presiding officer is an administrative law judge, and authorizes those agencies to provide by regulation for peremptory challenge of a presiding officer who is not an administrative law judge. Chair Dowdin Calvillo stated this bill was amended and will no longer have an impact to PERB.

Mr. Chisholm stated that he continued to track a small number of bills that may potentially impact PERB.

Motion: Motion by Member Wesley and seconded by Member McKeag that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be accepted and filed.

Ayes: McKeag, Wesley and Dowdin Calvillo.

Motion Adopted – 3 to 0.

Old Business

None.

New Business

None.

General Discussion

Chair Dowdin Calvillo announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through October 14, 2010 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board’s Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member McKeag and seconded by Member Wesley to recess the meeting to continuous closed session.

Ayes: McKeag, Wesley and Dowdin Calvillo.

Motion Adopted – 3 to 0.

Respectfully submitted,

Chris Wong, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Alice Dowdin Calvillo, Chair